BUAN JOONG SDN BHD

v.

SUPERINTENDENT OF LANDS & SURVEYS (KUCHING DIVISION)

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
MOKHTAR SIDIN JCA
RAUS SHARIF J
[CIVIL APPEALS NO: Q-01-26-2000]
16 MAY 2005

LAND LAW: *Acquisition of land - Compensation - Valuation date, correctness of - Dates of notification under ss. 47 and 48 of Land Code (Sarawak) - Comparables and market value*

The appellant herein had received an award of RM984,060,00 from the Superintendent of Lands & Surveys (Kuching) as compensation for the compulsory acquisition of its land (105 acres) by the Government of the State of Sarawak. Discontented with the said award, the appellant brought the matter before the High Court and the learned judge awarded it an additional sum of RM204,480.00.

The land had earlier been placed on notification under s. 47 of the Land Code (Sarawak) on 7 November 1974. Thereafter, it was placed under another s. 47 notification on 29 March 1990. Subsequently, on 8 October 1992, the land was placed on notification under s. 48 of the Land Code and the purpose for the acquisition was stated as "new prison site". An inquiry to assess the compensation to be awarded was held on 19 September 1992.

Before the Justices of Appeal herein, the appellant's main complaint was that the valuation date for the said land should have been 8 October 1992 and not 29 March 1990.

Held (dismissing the appeal)
Per Raus Sharif J delivering the judgment of the Court of Appeal:

[1] The reasoning of the learned judge for using 29 March 1990 as the valuation date was consistent with s. 60(1) of the Land Code which states, *inter alia*, that "the court shall take into consideration the market value at the date of the publication of the notification under s. 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s. 48." (pp 912 g-h & 913 a-b)

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu di sini telah menerima award sejumlah RM984,060 dari Penguasa Tanah & Ukur (Kuching) sebagai pampasan atas pengambilan wajib tanahnya (105 ekar) oleh Kerajaan Negeri Sarawak. Tidak berpuas hati dengan award, perayu membawa perkara tersebut ke Mahkamah Tinggi dan yang arif hakim telah memberi award tambahan berjumlah RM204,480.

Sebelum itu, tanah telah diletak di bawah pemberitahuan di bawah s. 47 Kanun Tanah (Sarawak) pada 7 November 1974. Ia kemudian diletak di bawah satu lagi pemberitahuan s. 47 pada 29 Mac 1990. Berikutnya, pada 8 Oktober 1992, tanah telah diletak di bawah pemberitahuan di bawah s. 48 Kanun Tanah di mana tujuan pengambilan dinyatakan sebagai "tapak penjara baru". Satu siasatan bagi menilai pampasan yang akan diaward telah diadakan pada 19 September 1992.

Di hadapan Hakim-hakim Rayuan di sini, sungutan utama perayu adalah bahawa tarikh penilaian bagi tanah tersebut sepatutnya adalah 8 Oktober 1992 dan bukannya 29 Mac 1990.

Diputuskan (menolak rayuan)
Oleh Raus Sharif H menyampaikan penghakiman Mahkamah Rayuan:

[1] Alasan yang arif hakim dalam menggunakan tarikh 29 Mac 1990 sebagai tarikh penilaian adalah selaras dengan s. 60(1) Kanun Tanah yang menyatakan, antara lain, bahawa "mahkamah hendaklah mengambil kira harga pasaran pada tarikh penerbitan pemberitahuan di bawah s. 47 atau, jika tiada pemberitahuan sedemilkian telah diterbit, harga pasaran pada tarikh pengeposan perisytiharan yang dibuat di bawah s. 48".

Legislation referred to:
Land Code (Sarawak), ss. 47, 48, 60(1)

For the appellant - Arthur Lee Cheng Chuan; M/s Arthur Lee, Lin & Co
For the respondent - Abdul Razak (Pn Norella with him)

[Appeal from High Court, Kuching; Civil Appeal No: LR-15-01-96-1]

Reported by Gan Peng Chiang

JUDGMENT

Raus Sharif J:
This is an appeal by the appellant against the decision of the High Court Kuching on an award for a compulsory acquisition by the Government of Sarawak under Part IV of the Sarawak Land Code (Land Code).

This appeal was heard and dismissed on 28 June 2004. We now give our reasons.

The subject land, at the material time was known as Lot 438, Block 4 Sentah – Segu Land District. It was a vacant piece of land located at 14th – 15th Mile, Pennissen Road, Kuching measured 42.06 hectares in size, which is equivalent to 105.26 acres.

The subject land was first placed under s. 47 of the Land Code notification on 7 November 1974. Subsequently the subject land was placed under another s. 47 notification on 29 March 1990. The notification under s. 48 was imposed on the subject land on 8 October 1992. Under the s. 48 notification, it was stated that the subject land was acquired for public purposes, namely the "New Prison site".

On 19 September 1992 an inquiry was held by the acting Superintendent of Lands and Survey, Kuching Division (Superintendent). The Superintendent awarded a compensation of RM984,060 for the acquisition of the subject land. Before the High Court, a further additional sum of RM204,480 was awarded as compensation for the acquisition of the subject land.

Before us, the first complaint raised by the learned counsel for the appellant was the learned judge's application of s. 47 notification of 29 March 1990 as the valuation date of the subject land. It was submitted by the learned counsel that the learned judge should have used the s. 48 notification of 8 October 1992 as the valuation date. This is because, according to the learned counsel, under s. 47 notification dated 29 March 1990, it was stated that the purpose was for road construction and improvement while under the notification under s. 48, the subject land was acquired for the purpose of a new prison.

This issue was dealt by the learned judge as follows:

> … However, Mr. Kho Lit Kiat, learned counsel for the appellant, argued that 1992, the year of the publication of the s. 48 notification should be taken because the s. 47 notification adverted to the likelihood of acquisition for purposes which are not the same as that mentioned in s. 48 notification and that only part of the land was stated to be affected. He did not cite any authority in support of his argument. I do not think he can find any, because the plain words of s. 60(1) do not permit such an interpretation. The relevant part of s. 60(1) says that "the Court shall take into consideration (a) the market value at the date of the publication of the notification under s. 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s. 48." In this case there was s. 47 notification, clearly it cannot argue otherwise that the year 1990, the date of the s. 47 notification, should be taken in s. 60(1).

We agree with the reasoning of the learned judge. Further, as pointed by the learned judge that assuming the s. 47 notification was not valid then the 1974 notification should be taken to be the valid and effective notification because there was no application to set it aside or have it declared null and void. If that is the case, then the market value of the subject property should be the valuation as on 7 November 1974; which would not benefit the appellant at all. In holding that the 1990 notification to be valid, the learned judge was giving the benefit to the appellant in taking that date to be the market value of the subject property. We see no merit in the submission of the learned counsel for the appellant.

Another issue raised by the learned counsel for the appellant was that the learned judge failed to consider the award of RM32,376 per acre awarded by the Superintendent to the applicant in respect of the acquisition on Lot 860 Block 4 Sentah-Segu Land District notification. That piece of land which was part of Lot 545, Block Sentah-Segu Land District and situated opposite the subject land. That piece of land was acquired under the same 1990 notification and the award was made in 1998.

It is an acceptable principle that small land is easier to dispose and as such it fetches a higher price. From the evidence Lot 860 consists of an area of 0.32 acres only, and for that reason the Superintendent deemed fit to award the sum of RM32,376 per acre. The subject property as pointed consists an area of approximately 105.26 acres. We are of the view that the learned judge was correct in not accepting the award as a good comparable to determine the market value of the subject property.

We could not find any error on the part of the learned judge in making the award. He had taken into consideration all the comparables submitted by valuers of both sides and made the necessary adjustments which lead him to increase the award by RM204,480. This sum is an additional award to the original award of RM984,060 made by the Superintendent.

For the above reasons we dismissed the appeal.